

19                   We can reconvene our second panel.  
20       Madam Secretary, if would introduce our guest.  
21                   MS. DICKON: I will; thank you. Today's  
22       second Panel is led by Mr. Richard Craig; to be

1 followed by Mr. Paolo Magnani; Mr. Howard Finkel;  
2 and Mr. John Butler. You can go ahead.

3 MR. CRAIG: Okay; thank you  
4 Commissioners. I appreciate the opportunity to  
5 speak at this hearing and, hopefully, to dispel a  
6 couple of misconceptions that I heard yesterday.  
7 I do want to be clear that I'm here on behalf of  
8 MOL America. I do not represent the new  
9 Japanese-merged company, Ocean Network Express  
10 that's slated to commence operations on April 1st.

11 I believe it to be well understood by  
12 now -- I think it's been clear -- that demurrage  
13 and detention charges for the purpose of  
14 facilitating is efficient a supply chain as  
15 possible. Demurrage is primarily intended to  
16 expedite the movement of cargo through the marine  
17 terminals. It'll probably be better addressed at  
18 the next group, but these facilities are not  
19 intended to be used as storage facilities; space  
20 is limited; and the terminals represent some of  
21 the most expensive non-residential waterfront land  
22 in the world -- primary collective interest for

1 all of us to ensure that the marine terminals  
2 remain as fluid as possible. This, in turn, means  
3 that containers must flow promptly through the  
4 facilities.

5               Nevertheless, my organization, MOL  
6 America, does recognize that there's extenuating  
7 circumstances which can prevent the movement of  
8 containers in and out of the terminals. At such  
9 times, MOL does attempt to proactively avoid  
10 imposing unfair charges and we have a  
11 well-documented process for dealing with any  
12 disputes that remain after the fact. I was,  
13 frankly, a little disappointed yesterday to hear  
14 the results of a survey that didn't paint us in  
15 very good light; but not knowing the methodology  
16 of that survey, the questions; the nature of the  
17 relationship of the parties that might have been  
18 surveyed; and how we might compare with any  
19 parties, I really can't address any specifics  
20 there.

21               I will say that I meet with ongoing,  
22 have been meeting over the last several years,

1 with a large cross- section of our customers,  
2 large and small customers, BCOs and NVOs; and I've  
3 got to say this issue doesn't really come up when  
4 we're talking about concerns and problems that our  
5 customers face. So, I think that, to the best of  
6 my knowledge, the process that we have in place  
7 works reasonably well, has been for the last  
8 several years. We did take corrective action with  
9 the problems that occurred earlier on, and I think  
10 we worked things out for the most part to a mutual  
11 satisfaction of the parties involved. I've said  
12 repeatedly that I welcome hearing from any party  
13 that feels that they've not been treated fairly by  
14 MOL in this regard.

15           Depending on local practices, demurrage  
16 charged by the ocean carriers can be something of  
17 a pass-through from the terminals. We pay the  
18 terminals based on their tariff relations, and  
19 then we charge our customers separately. In  
20 research in preparation for this hearing, I've  
21 gone back, and starting with a series of events --  
22 you know, going back to 2012 with Hurricane Sandy

1 -- MOL has, in aggregate, absorbed more in  
2 demurrage expense from the terminals than we have  
3 collected from our customers, we're net  
4 out-of-pocket here. To say that this is a money  
5 maker, a revenue opportunity for MOL, is not the  
6 case. It's not a profit center for us.

7 Detention -- or use the term per diem  
8 here -- these charges are also intended to  
9 expedite the movement of containers and chassis.  
10 While the daily detention charge -- yes, it does  
11 exceed the cost of the assets, whether it's \$3.00  
12 or \$30.00 for a chassis, we heard yesterday -- the  
13 detention charges are greater than that. The  
14 reason for the detention charges is to not hinder  
15 the prompt movement of assets back to where  
16 they're needed for the next move. The cost of the  
17 asset itself is not relevant here.

18 Ocean carriers must maintain a  
19 disciplined balanced equipment flow -- what we  
20 call the match-back. We're under a lot of  
21 scrutiny from our headquarters. What comes in has  
22 to go back out, largely on a vessel-by-vessel

1 basis so that the containers are in the right  
2 place at the right time for the next movement.  
3 Otherwise, when we get out of balance when we're  
4 not achieving the match-back, we can face very  
5 high operational costs for the dislocations and  
6 great risks of not being able to cover downline  
7 bookings overseas. We can go into this in a lot  
8 of detail at the right time. We had the hurricane  
9 issues in recent weeks caused disruptions; caused  
10 disruptions to our match-back. We're under a lot  
11 of pressure now to get the boxes back for the  
12 Chinese New Year rush, and so forth; everything's  
13 got to work seamlessly and fluidly to keep the  
14 network going. That's the real issue with these  
15 charges. MOL's business model most definitely is  
16 not built around collecting demurrage and  
17 detention fees. We want to keep our assets  
18 moving; we want to keep our network fluid.

19 Ironically, some of the parties that  
20 press us on this side for special arrangements to  
21 hold on to the equipment, often, at the same time,  
22 are pressing for equipment availability to cover

1 bookings overseas. So, we're getting it on both  
2 ends.

3           Similar to demurrage, MOL attempts to  
4 avoid unfair charges for detention when return of  
5 equipment is not possible, and our same dispute  
6 resolution process applies here. I want to be  
7 clear that demurrage and detention terms are  
8 subject to negotiation in the marketplace. The  
9 ocean transportation market is extremely  
10 competitive. If a party does not like how one  
11 carrier handles a demurrage or detention  
12 situation, the party is free to negotiate  
13 different contractual arrangements; the party can  
14 freely switch to another carrier. Yes, there's a  
15 lot of mergers going on. There're still 10 or 11  
16 major carriers out there; we compete fiercely  
17 across and within the alliances; and each customer  
18 is going to continue to have a large choice of  
19 ocean carriers going forward.

20           The same does apply with marine  
21 terminals, though it is a bit more indirect.  
22 There's no question that many customers make

1 carrier routing decisions based on using or  
2 avoiding particular marine terminals for any  
3 number of reasons.

4 Any criteria that an outside entity were  
5 to determine as appropriate for prohibiting the  
6 imposition of such charges is going to be  
7 subjective. We've heard a lot about gray areas.  
8 What is terminal congestion; what is a weather  
9 event; who's going to determine that? It's going  
10 to be controversial -- any rules that were to get  
11 set up here.

12 Also, situations such as severe weather  
13 events are disruptive, and costly to all involved.  
14 We heard that yesterday, I think, how expensive  
15 this can be to us. Our own service providers, our  
16 own vendors, don't stop the clock for us when we  
17 face uncontrollable expenses for vessel hire, and  
18 so forth. Why are we the ones to be caught in the  
19 middle here? Why should we be predisposed that we  
20 would be incurring the risks for these costs?  
21 Somehow that just doesn't seem fair to me.

22 That's largely it. Again, I'd like to

1       thank you very much for the opportunity to express  
2       some views here.

3                   MR. MAGNANI:   Good Morning, Chairman  
4       Khouri, Commissioner Dye, and Commissioner Maffei.  
5       My name is Paolo Magnani, and I'm an Executive  
6       Vice President for MSC USA.  I would like to  
7       briefly emphasize three specific points.  
8       Demurrage, detention, and per diem, are indeed  
9       very, very complex issues.  Ocean carriers still  
10      have costs when those charges are waived or  
11      discounted.  Those charges are different -- upon  
12      which carriers compete.  Most do not realize the  
13      complexity of these charges since most customers  
14      operate only in one or a few parts.  Let's take an  
15      example for the demurrage charge.  There are  
16      different charges regarding actual three days.  
17      Some terminals operate using working days; some  
18      other using a calendar of consecutive days.  So,  
19      five days, for example, do not always mean the  
20      same thing.  Also, some port consider the  
21      discharged date as the first free day; some  
22      consider the day after as the first free day; and

1       some consider the time of discharge to determine  
2       whether that day should be counted or not. There  
3       are ports that grant additional free time based on  
4       volume on the same ship; some other consider  
5       commodity; and other consider the type of  
6       containers, like reefer or platform, and all  
7       differentiate by size.

8               A few terminals also have agreement  
9       direct with clients to determine when their free  
10      time is extended. Some terminal have two brackets  
11      of days in which the tariff increase; some others  
12      three; and some even four; and correctly so,  
13      because the space availability they have is a  
14      crucial factor for them to operate.

15             To make things even more complicated,  
16      there is an ongoing problem of the different  
17      interpretation on a worldwide basis of the  
18      terminology. In this case, we are talking about  
19      demurrage, but what is really meant by demurrage.  
20      While in the USA it is generally clear, in other  
21      countries they refer to demurrage as something  
22      entirely different; and, consequently, foreign

1 shipper or receivers may be negotiating for a  
2 different free time than what they actually  
3 intended.

4 Ocean carriers still have costs when  
5 charges are waived. It is commonly misunderstood  
6 that when a carrier waive one of the charges, like  
7 detention or per diem, nobody lose money. That is  
8 actually not true. The carrier in all cases will  
9 have to pay charges like the long term use of the  
10 container; the chassis; the boxes mounted; or the  
11 energy costs if the box is a reefer. Those are  
12 just examples.

13 Even just extending the free time, it  
14 could have a very real cost to carriers. Another  
15 ship may arrive and the box couldn't dock below  
16 some new boxes, just discharge it. To deliver the  
17 container, the line will have to pay the terminal  
18 additional charges to reposition the box on the  
19 top. There are even more hidden costs, especially  
20 if you differentiate between import and export.

21 So, when speaking of waiving or  
22 extending these charges, it is important to ensure

1       that everyone understands that there is only one  
2       sure payer, the ocean carrier. The charges become  
3       a differentiator upon which carriers, all of us,  
4       compete. I mention a number of differences and  
5       exceptions. They could be seen as a negative, but  
6       in reality they are extremely positive. First of  
7       all because they create competition among  
8       carriers; second, because they give the  
9       opportunity to customer to choose between carriers  
10      depending on the condition in a specific port or a  
11      specific location. Understanding the various  
12      styles between charges of the carriers will lead  
13      to significant saving for shipper or receivers. A  
14      well-informed customer is one that is able to  
15      match the need of each of their client and their  
16      commodity with the best suited carrier.

17               Price alone is not the real  
18      differentiator. The price plus the rule  
19      associated with it is what actually really count.  
20      Those charges and the way each line build them and  
21      use them create a real competition among carriers  
22      and should not be regulated because these would

1 distort those factors in the marketplace.

2 In conclusion, it is my view, the  
3 complex issue of demurrage, detention, and per  
4 diem can be, and are managed effectively as a  
5 commercial matter between ocean carrier and other  
6 stakeholders. Further regulation desire is  
7 unnecessary and the marketplace can address this  
8 without additional government intervention.

9 Thank you for the opportunity to appear  
10 here today. I will be pleased at once for any  
11 questions you may have.

12 MR. FINKEL: Good morning, Chairman  
13 Khouri, Commissioner Dye, Commissioner Maffei.  
14 Thank you for the opportunity to testify this  
15 morning. My name is Howard Finkel. I am  
16 Executive Vice President of COSCO Shipping Lines,  
17 North America. I would like to try to fill in  
18 some important facts that I feel have been missing  
19 from this discussion. My first point is when it  
20 comes to the obvious clear cut situations where a  
21 weather event closes an entire port, we routinely  
22 provide extra free time to our customers to return

1 equipment. That's something that most terminal  
2 operators do as well on the demurrage side. When  
3 we anticipate and are well informed of a weather  
4 incident, we have called the terminal operators  
5 and request they give relief on demurrage. These  
6 requests are taken seriously. So, the situation,  
7 in my opinion, doesn't present a problem, and I do  
8 not see any need for regulation.

9           When the situations are less clear cut,  
10 we look at them on a case-by-case basis. If the  
11 claim, as we feel legitimate and a customer has  
12 made an honest attempt to return equipment on a  
13 timely basis but could not do it, we have provided  
14 relief. These kinds of situations vary from port  
15 to port, and event to event; though, and I don't  
16 see how you write a national regulation to address  
17 that. I've been involved in this business for a  
18 long time and I don't see a lot of situations  
19 where people can legitimately claim they have not  
20 been treated fairly.

21           My second point is carriers' policies on  
22 equipment, free time, and detention is subject to

1 intense competition that is generally addressed in  
2 confidential service contracts. Shippers put  
3 tremendous pressure on us to offer free time that  
4 is considerably longer than is what is in the  
5 tariff, and will withhold signing unless we  
6 capitulate to their demands.

7 This is not a situation where the  
8 shippers are pressured to return their equipment  
9 in an unreasonable time. Most of the time, with  
10 these extra free time clauses, the shippers have  
11 plenty of time to return the equipment even when  
12 there is a severe weather issue. This is a bit  
13 technical, but carriers have also been asked to  
14 write in stop-clock provisions into our contracts  
15 which means when the shipper calls the carrier and  
16 states the container is empty, we then have to  
17 immediately stop the clock on that day, and it  
18 could be the last day of free time.

19 We have situations now where a lot of  
20 shippers nominate their own customer-nominated  
21 truckers; and sometimes when they have these  
22 customer-nominated truckers, they have these

1 stop-clock clauses in the contract. Now, what we  
2 try to do in those cases is say okay, this is the  
3 day the stop-clock ends. Of course, when you  
4 call, the detention clock ends, but you have 24 to  
5 48 hours to return that equipment. Now, if we  
6 write that into the contract, that's good.  
7 However, we've been pressured to leave that  
8 wording out, and we've had situations where  
9 shippers have kept our containers up to six  
10 months. We had a situation where this happened.  
11 The shipper tried to sign the next year with us;  
12 we told them they'd have to make sure their  
13 customer-nominated truckers return the container  
14 within that time period. They said, we understand  
15 why you want that, but we're not signing with you;  
16 and if you put that verbiage in the contract,  
17 we're not signing. Very unfair, and we decided  
18 not to sign.

19 Another important point is because the  
20 market puts pressure on us to provide extended  
21 free time in our contracts. Free time becomes a  
22 net-economic cost for us. It has been suggested

1 by some that detention charges are a profit center  
2 for carriers. That is not the case. We would  
3 much rather have a quicker turnaround time on our  
4 equipment than having to calculate and collect  
5 detention.

6 Like ships, containers cease making  
7 money when they sit idle. When a container sits  
8 at a contain yard, that's a piece of equipment  
9 that can't be used for U.S. export, or be sent  
10 back for another import load. During peak  
11 seasons, idling equipment becomes a headache not  
12 only for the carriers, but the U.S. exporter and  
13 importer.

14 If we were forced by regulation to  
15 extend free time even further, that adds extra  
16 cost to the carrier and may put additional strain  
17 on the entire supply chain that needs equipment to  
18 be available and flow freely. I can tell you,  
19 next week I'm going to be down in the Port of  
20 Houston talking about this huge surge of resin  
21 that's coming. I'm going to get -- I've been  
22 speaking about this for two years now; and I'm

1       sure the shippers are going to be screaming  
2       because they want equipment. If you need  
3       equipment in a port, the equipment can't be  
4       sitting in a container somewhere just with extra  
5       free time.

6               There was a misconception that the only  
7       cost associated with excessive free time is just  
8       daily lease costs, or capital costs of the  
9       container. This is not accurate. As mentioned,  
10      an idle container means a lost opportunity to  
11      carry more equipment and to serve our customers  
12      better.

13             Putting these basic points together, I  
14      don't see a case for new regulation here. I  
15      realize that the Petition has several claims about  
16      poor congestion, weather slowdowns in the past,  
17      but I didn't see many specific examples of  
18      situations where carriers could be characterized  
19      as being unreasonable. It should also be noted  
20      that today we are not experiencing the chronic  
21      port congestion like we did in 2014 and 2015.  
22      When you combine that with the fact the market is

1 already requiring carriers to provide extra free  
2 time, which is costly, it can hurt equipment  
3 availability during certain peak periods; I don't  
4 see the case for more regulation.

5 I hope that instead of issuing new  
6 regulations based on what you've heard on this  
7 Petition, the Commission will encourage supply  
8 chain members to communicate with their carriers  
9 if they think that a particular carrier has done  
10 something unreasonable; and if that doesn't work  
11 go to arbitration; or go to court; or file a  
12 complaint with the Commission.

13 The last weather incident was a case in  
14 point in Houston. Shippers did file grievances  
15 with the Commission's CADRS Department. I was  
16 involved in this every day. Shippers called who  
17 had some problems in Houston. Prior to the  
18 hurricane, we actually called the Port of Houston  
19 and said we'd really like you to consider  
20 cancelling demurrage or extending the free time.  
21 It wasn't honored right then, but after the  
22 incident and after we had conversations with the

1 shippers, the Port of Houston did consider it;  
2 and, right now, we are actually issuing refunds to  
3 shippers for that issue.

4 My last point is that I think it would  
5 be a mistake to issue new regulations, but if it  
6 goes this route, it is critical that carriers do  
7 not get stuck in the middle of terminal demurrage  
8 charges. Yes, we do collect these charges, but,  
9 at best, they are pass-through costs for us  
10 especially considering the administration costs of  
11 managing these charges. If a terminal can levy a  
12 demurrage charge, the carrier has to be able to  
13 recover that charge. If you were set up a  
14 situation where this was not addressed, it would  
15 place an unfair financial burden on the carriers.

16 I would like to say I've been in this  
17 industry 37 years, and I review every single  
18 contract we have with shippers goes through me;  
19 and a lot of times, the sales rep say we don't  
20 understand why you're arguing with us about free  
21 time, it's free. There's nothing free about free  
22 time. We should probably change this to container

1 dwell time.

2 I appreciate the opportunity to address  
3 you all here today, and will be happy to answer  
4 any questions you might have.

5 MR. BUTLER: Good morning, Chairman  
6 Khouri, Commissioner Dye, and Commissioner Maffei.  
7 Thank you for the opportunity to testify today.  
8 My name is John Butler. I'm President and CEO of  
9 the World Shipping Council. The Council has filed  
10 two sets of comments in response to the Petition.  
11 I'm not going to try to summarize today everything  
12 we've said in those papers. What I would like to  
13 do is to highlight a few key reasons, why the  
14 Petition should be denied.

15 I understand that the Commission is  
16 interested in port efficiency broadly, but we're  
17 here today on a specific petition; and I think  
18 it's important to address the details of that  
19 petition. The Petition asks the Commission to  
20 transform carriers and marine terminal operators  
21 into guarantors or insurance providers for weather  
22 events; labor disputes; equipment shortages; and

1 government cargo inspections. The Commission  
2 should decline that invitation on the grounds that  
3 the relief that the Petition seeks is unsupported  
4 by the law and the facts. In addition, granting  
5 the requested relief would be bad policy.

6 On the law, the relief that the Petition  
7 seeks has already been rejected by the Commission  
8 in the very case that the petitioners rely upon  
9 most. That case is a 1948 New York One case which  
10 the Petition cites some 14 times. In the New York  
11 case, the U.S. Maritime Commission found that it  
12 would be improper to place responsibility on  
13 carriers for delays associated with pest  
14 quarantines; food and drug inspections; customs  
15 inspections; truck congestion; and port  
16 congestion. In short, the very case the  
17 petitioners rely upon most stands for the  
18 proposition that the Commission should not grant  
19 the Petition.

20 The other important legal point is that  
21 the Petition offers a legal standard that is  
22 inconsistent with the Shipping Act. The

1 touchstone for the Petition and for yesterday's  
2 testimony, is whether a delay is "not the fault of  
3 the shipper or the trucker." It is correct that  
4 someone seeking relief from the Commission can't  
5 have caused the problem that they're complaining  
6 about; but that is only the beginning of the  
7 analysis, not the end.

8 In a Section 10(D)(1) case, the statute  
9 requires the Commission to look at the behavior of  
10 the marine terminal operator or the carrier, and  
11 to ask whether that behavior is unreasonable. The  
12 focus is not on the fault or lack thereof of the  
13 shipper. The standard that petitioners have  
14 offered looks to the wrong parties; and as a  
15 result, the Petition provides no useful guidance  
16 to the Commission in deciding what carrier and MTO  
17 practices are just and reasonable, and which are  
18 not. That is a fatal flaw; and the Commission  
19 cannot adopt a rule that uses the "not my fault"  
20 standard as its foundation.

21 On the facts -- the World Shipping  
22 Council in its first set of comments address the

1 facts presented in each of the verified statements  
2 attached to the Petition. Almost without  
3 exception, the verified statements demonstrate  
4 either that the disputed charges were  
5 substantially waived; that the delays complained  
6 of were caused by the government; or that the  
7 delays had been caused by labor slowdowns or  
8 weather.

9 The most common demurrage trigger raised  
10 in the testimony yesterday was government  
11 inspection of cargoes -- something that cannot be  
12 laid at the feet of carriers and marine terminal  
13 operators. Those situations would not result in  
14 relief under any rule that could be drafted under  
15 the applicable statutory authority and the  
16 Commission's own precedent.

17 There has been a lot of frustration  
18 expressed; and I understand that the frustration  
19 is genuine, but the record here is very thin in  
20 terms of how often there have been situations that  
21 are arguably unreasonable under the Shipping Act.

22 Finally, detention and demurrage

1 charges; the situations that trigger them; and the  
2 resolution of disputes over those charges are very  
3 fact specific. There is already a mechanism in  
4 place for an aggrieved party to bring a complaint  
5 to the Commission where a proper review of all of  
6 the facts can be made. That has not occurred. No  
7 party has brought a reparations case dealing with  
8 detention and demurrage at the Commission in  
9 recent times; and as a result, the Commission does  
10 not have the experience of litigation to help it  
11 define the issues. In no small part, because of  
12 the work the Commissioner Dye has done with the  
13 supply chain innovation teams, there is  
14 substantial work being done today to make  
15 America's ports more efficient. The trade press  
16 regularly reports the efforts to create those  
17 solutions. From new software products for  
18 managing free time and container movement, to the  
19 trucker appointment systems being considered in  
20 New York and New Jersey; to the port-wide  
21 information sharing system being piloted by the  
22 Port of Los Angeles, the marketplace should be

1       allowed to continue to address the many  
2       complexities of these issues.

3               At the end of the day, the Petition asks  
4       the Commission to wade into the business of  
5       allocating commercial costs and risks that are  
6       today allocated by the market. This Petition does  
7       not make persuasive case for the Commission to  
8       accept that invitation, and the Commission should  
9       deny the Petition.

10              I appreciate the opportunity to testify.  
11       I'd be happy to answer any questions that you  
12       might have.

13              CHAIRMAN KHOURI: Thank you. Thank all  
14       of you for your testimony, for being here today.  
15       Yes, a number of questions. I, likewise, have  
16       wondered with the millions of containers that are  
17       coming into the country every year; progress that  
18       one has made since the acknowledged long running  
19       labor dispute in California from late summer of 14  
20       into 15; but there was reference made -- I think  
21       we started with you Mr. Craig -- could you talk  
22       another minute or two -- you know, when we went

1 through the Southern California situation --  
2 excuse me, we, the Commission -- went through  
3 Hurricane Sandy and a lot of those issues hinge in  
4 -- I'm going to say is such a unique mess; I won't  
5 use some of the vulgar terms, enough vulgarity --  
6 but the hurricanes in Houston -- I know New  
7 Orleans shut down -- all those; and then you have  
8 one after another; and I know I have personally in  
9 my professional career implemented hurricane  
10 shutdown procedures and then getting back up --  
11 it's quite an undertaking; and we did not hear  
12 dislocations. What happened? Were they lessons  
13 learned -- and these were some very severe  
14 hurricanes. Talk to us about demurrage and  
15 detention after that series of hurricanes this  
16 season.

17 MR. CRAIG: I'll start with --

18 CHAIRMAN KHOURI: All three, please.

19 MR. CRAIG: Okay. I think Howard  
20 articulated, probably better than I did, some of  
21 the proactive steps that were being taken. I do  
22 think collectively we've all learned a lot going

1 back to these series of events, starting four or  
2 five years ago. We had the group in New York that  
3 put together a much better communication, a more  
4 proactive program, and so forth. Nowadays we get  
5 proactive. When we see something coming, most of  
6 the major terminals and ports will pre-announce  
7 the terminal is going to be closed; that there's  
8 going to be a waiver of demurrage. We, in turn,  
9 reflect that in our own systems, both for  
10 demurrage and detention. So, we proactively stop  
11 the clock; the meter's not running, so to speak,  
12 during that time frame for both types of accounts;  
13 and, therefore, there is no charge for it. This  
14 is working -- again, we've all learned over the  
15 last three or four years, it wasn't quite like  
16 that perhaps in say 2013. I think the winter of  
17 2013 in New York was probably the next big one  
18 where we all learned a lot from that.

19 Now, to my acknowledge, Houston -- we  
20 don't call Houston; so I'll have to defer on that  
21 one; but, certainly, on the East Coast in recent  
22 years -- I think this whole process has worked a

1       lot better. We've had huge dislocations --  
2       operational dislocations -- that have been very  
3       expensive to us that I alluded to a few minutes  
4       ago that we have to address. But that's our  
5       problem to get the boxes back, deal with the  
6       scheduled disruptions, and so forth; but I think  
7       in terms of how we charge the demurrage, detention  
8       under those circumstances for that time frame,  
9       when the terminals are not operational, I think,  
10      has become -- I'm not sure if seamless is quite  
11      the right word -- but we're pretty well along in  
12      that regard.

13               MR. MAGNANI: I can, indeed, confirm  
14      what Richard mentioned that already, let's say,  
15      automatic things that happen when an event is  
16      treated like it's no storm in port closure, a  
17      hurricane, and this event, let's say, black and  
18      white; and we automatically as a carrier, at least  
19      the practice, of immediacy is in this to extend  
20      the free time and not to be let the demurrage,  
21      detention or the per diem and when they tell you  
22      it's closed or a container has been closed, every

1 ramp is closed for that month.

2 MR. FINKEL: Yeah; I'd just like to add  
3 that as mentioned we're in intense competition  
4 with each other even amongst the alliances. The  
5 competition is intense. The last thing you want  
6 to do is be a carrier that is strict on demurrage  
7 and doesn't give any relief when there's a natural  
8 disaster. We've learned this you don't want to be  
9 sitting in front of a customer trying to sign a  
10 service contract when they think you've been  
11 unfair to them.

12 As mentioned in the Houston situation,  
13 we knew what was coming; we tried to get  
14 pre-release from the terminal -- it wasn't 100  
15 percent when we first talked to them -- as soon as  
16 the event was over, we started hearing from  
17 customers. We heard from your CADRS Department,  
18 and they basically said, this one particular  
19 customer was very upset; and I said, we'll take a  
20 look at it, but you understand that the terminal  
21 -- we still have to pay the terminal -- and they  
22 mentioned well, you charged them? I said I

1 understand that but we have to pay the terminal.  
2 So, we had discussions; the terminal came back and  
3 said yes, we are going to give relief; give us the  
4 issues. It was actually a lot of work, but we did  
5 it and checks are being cut for the shippers now.  
6 So, we've learned; we're extremely active as far  
7 as trying to make sure our customers are happy,  
8 and I said if you have a reputation on making  
9 money on demurrage and detention, that shipper's  
10 not going to want to sign with you. You have to  
11 be commercially sensible, and I realize what the  
12 shippers' problems are, and I think carriers have  
13 been.

14 CHAIRMAN KHOURI: You know, I must say,  
15 you understand that we've been hearing that there  
16 is limited, if any ability to negotiate, as been  
17 prior testimony, on these issues; if I may from a  
18 different perspective, just comment, we'd like to  
19 hear and see competition not just by and amongst  
20 the alliances, we want to see competition by and  
21 amongst each member inside of the alliance, and  
22 that's the key areas that we want to see in terms

1 of competition.

2 Let me go to -- because I just happen to  
3 have opportunity -- and you mentioned it -- your  
4 tariff, and how you -- I don't know if you've done  
5 this analysis -- if you were to take your tariff  
6 and put it beside the Petition, are there  
7 differences in your tariff in the Petition?

8 MR. BUTLER: Mr. Chairman, I'll step in  
9 on that because it's a combination, I think, of a  
10 factual question and a legal question.

11 CHAIRMAN KHOURI: That's fine. You  
12 understand what I'm --

13 MR. BUTLER: We'll find out in a minute  
14 whether I understood your question. You may be  
15 referring to some provisions in the tariffs that  
16 speak, for example, to weather events when the  
17 entire port is shut down. In that sense and I  
18 think you've heard the testimony today, what's  
19 being asked for has already been granted not only  
20 by carrier tariffs but also terminal tariffs. So,  
21 I don't see any problem there and, therefore, I  
22 see no reason to regulate.

1                   Where this gets a bit more problematic  
2           is if you really look at what the Petition is  
3           asking for. If you look at Exhibit A to the  
4           Petition -- and this goes back to something I  
5           addressed in my testimony. The events are one  
6           thing -- I mean one of the things that the  
7           Petition says is an event or trigger for free time  
8           extension is delays as a result of government  
9           action or requirements. That's something that's  
10          completely outside the control of the carrier or  
11          the marine terminal operator; and as I discussed  
12          in my testimony, and as was discussed yesterday,  
13          the Commission has never placed responsibility for  
14          those things on carriers or terminal operators.

15                 The other problem with the Petition is  
16          that whatever the event is that's the trigger, the  
17          standard that they've asked you to adopt is it's  
18          not the shipper's fault. That's not the proper  
19          standard under the Shipping Act. The Shipping Act  
20          asks whether a carrier or a marine terminal  
21          operator is doing something unjust or  
22          unreasonable. So, fault or not on the part of the

1 shipper -- sure they have to come to you with  
2 clean hands, but that's not the analysis. If you  
3 were going to place a restriction or issue an  
4 interpretation of Section 10(D)(1), you have to  
5 address the carrier's behavior or the terminal  
6 operator's behavior; and the Petition invites you  
7 to completely ignore that part of the analysis --  
8 you can't do that.

9 CHAIRMAN KHOURI: And perhaps this would  
10 be a, rather than me try to pass back and forth  
11 what I have in front of me, one of those where we  
12 can do a post-hearing question and give you time  
13 to analyze, think about it, and address the rest  
14 of the issues.

15 Testimony yesterday lists appointment  
16 systems; and there are scenarios and examples that  
17 -- for me, personally -- are quite troubling  
18 assuming the issues are all true, and I go back to  
19 Mr. Craig's point of how often is this happening,  
20 and calls for transparency; but could you address  
21 for a minute those situations where with the  
22 growing prevalence of appointment systems and

1       beneficial cargo owners saying we call for  
2       appointments and we're told none are available  
3       this week; it'll be next week; and the appointment  
4       that's available is outside of their free time.  
5       Can you, perhaps, in general, talk about your  
6       experiences with those types of factual  
7       situations?

8               MR. CRAIG: I'll start. It's hard to  
9       generalize here. These situations are on a  
10      case-by-case basis, okay. I think what we were  
11      talking about before, given events that we make  
12      mass system updates, and everything is adjusted  
13      from there. After that, it really becomes a  
14      case-by-case. If a particular party has a  
15      legitimate grievance, they come to us with the  
16      situation; we have a point of entry; we have a  
17      process; we have people that have a limit on how  
18      much they can agree to commit to -- and you know,  
19      there's a hierarchy on this; so, basically, it's  
20      all on a case-by-case basis. And the individuals  
21      are empowered to say yes, this is a legitimate  
22      issue; yeah, we'll waive the demurrage, or waive

1 the detention in this case, for so much money.  
2 So, these are done on a transactional case-by-case  
3 basis where this sort of situation comes up.

4 MR. MAGNANI: To answer more directly  
5 your question. I relate it to the appointment  
6 system. I am part of the escalation process in a  
7 Mediterranean Shipping Company. Whenever there is  
8 a problem or a dispute on a demurrage and  
9 detention charge, I'm actually the top escalation  
10 point, and they often deal with CADRS on this  
11 issue and many issue; and I have to say that so  
12 far I do not recall receiving any particular high  
13 amount, or any particular excessive amount, of  
14 complaints relating to demurrage, or detention, or  
15 per diem related to the appointment system in  
16 California. I do not have a recall of this.

17 MR. FINKEL: Yeah, there're very similar  
18 comments. Believe me if this was at issue, it  
19 would get to my desk and I'd be coming intimately  
20 involved with it. I can also say that we're in  
21 this learning process now. You know, before OSRA,  
22 a lot more cargo moved via tariff and now it moves

1 via service contracts; and a lot of these issues  
2 -- every year these service contracts get a little  
3 bit more sophisticated because when shippers say  
4 hell, we have a problem here, let's fix it in the  
5 service contract and, of course, I'm the guy who  
6 say okay, that's reasonable or it's not  
7 reasonable. Just like the stop-clock thing. I  
8 think a lot of carriers said okay, stop clock, and  
9 then they have another thing where it's a  
10 customer-nominated trucker and the carriers didn't  
11 think oh, let's make sure the customer-nominated  
12 trucker has 48 hours to return or else they can  
13 keep the container forever. So, it's something  
14 that's evolving; but I can tell you this issue has  
15 not come to my desk.

16 MR. BUTLER: I don't have anything to  
17 add on the operational side. The only thing I  
18 would say is that I believe that -- I mean maybe  
19 appointment systems used to have a bad name, I  
20 think, now in many cases, there're seen as part of  
21 the solution; and so I would just urge you to be  
22 very deliberative and considering possible rules

1 and regulations surrounding the operation of  
2 appointment systems. If people think that it's  
3 going to turn into a situation where no good deed  
4 goes unpunished, you're going to have fewer  
5 appointment systems; and that's going to lead to  
6 more delay, not less. So, I understand the  
7 conceptual issue of if you had a situation where  
8 people were routinely being told or given an  
9 appointment in nine days and you've got five days'  
10 free time, well, then something would be out of  
11 whack. But to the points raised by my colleagues,  
12 you'd want to really make sure that was a factual  
13 situation that was occurring before you tried to  
14 address it. I haven't heard anything yet that  
15 indicates that's an all common situation.

16 CHAIRMAN KHOURI: Thank you. I ran over  
17 my time. Commissioner Dye.

18 COMMISSIONER DYE: Thank you very much.  
19 Dick Craig, I've heard you several times discuss  
20 your company's approach on demurrage, and I'm  
21 having a hard time figuring out how your approach  
22 differs from what the Petition actually asks for.

1       When they -- and I'm not reading from the Petition  
2       itself; this was the handout that the shippers  
3       actually circulated yesterday; so if I have you at  
4       a disadvantage, I apologize, because this is not  
5       an inquisition despite -- I've set in your chair,  
6       and I know it can feel like that, but it is not.  
7       That if the disability is caused by an event or  
8       circumstance that is beyond the control of the  
9       shipper, then the failure to extend free time  
10      would be considered unreasonable. Are there  
11      events that are beyond the control of shippers  
12      where you don't, on a case-by-case basis, consider  
13      waiving demurrage?

14               MR. CRAIG: Where it's out of control of  
15      the shipper on a case-by-case basis?

16               COMMISSIONER DYE: Right.

17               MR. CRAIG: It's hard to generalize. I  
18      mean we try to be kind of, I think, Howard, again,  
19      spoke well. We don't want to lose business here.

20               COMMISSIONER DYE: I understand.

21               MR. CRAIG: This is relatively, in the  
22      overall scope of things, these are not big items.

1       We don't want customers upset with us over an  
2       issue like this.

3               COMMISSIONER DYE:   Yes.

4               MR. CRAIG:   We tend to be accommodative;  
5       we don't want this being held as a gun to our head  
6       at the next service contract negotiation because  
7       this is not really what's at issue.  So, I'm not  
8       going to say we're 100 percent, I think, you know,  
9       again, we have people -- we have a group that  
10      handles these issues; they look at the pluses and  
11      minuses; try to make the right decision based on  
12      that.  Certainly the philosophy, the intent is to  
13      be accommodative, and the intent is to be  
14      reasonable.  I think that's about as much as I can  
15      say.

16              COMMISSIONER DYE:  Right; sure.  Do you  
17      have any idea how much it cost you to administer  
18      all this -- the case- by-case --

19              MR. CRAIG:   Too much.

20              COMMISSIONER DYE:  Right.

21              MR. CRAIG:   We've probably -- I mean  
22      we've got a group of people that handle a lot of

1 issues, a group of seven or eight people, called  
2 our care team; and this is one of several realms  
3 of areas they deal with. You know, if you want to  
4 equate it to a head count or something like that,  
5 it might be a couple people, something like that;  
6 but it comes and goes based on how well things are  
7 moving. If there are a lot of issues; there's a  
8 lot of activity there; if things are humming well,  
9 then not so much. You know, recent months it's  
10 been relatively quiet, so maybe not so much there.

11 COMMISSIONER DYE: Right; because I do  
12 think that, and you're here, you heard the  
13 testimony yesterday, that there is a lot of  
14 after-the-fact frustration in getting a prompt  
15 resolution. Sometimes bills, rather than having  
16 cargo held up, there are bills that are sent out  
17 months after the fact, and that resolution process  
18 is something else -- I guess, Howard, I'll talk to  
19 you about yours -- what do you have to say about  
20 that.

21 MR. FINKEL: We have a department that  
22 looks after this, does the billing. It's a

1       considerable cost to us. We don't have too many  
2       cases where we send out bills way after the fact.  
3       We try to stay on top of this; and truthfully, the  
4       shippers will stay on top of it too, because if  
5       you are doing things months after the fact, you  
6       know, memories are not so great and people don't  
7       remember exactly what happened; and you don't want  
8       to get into a situation where nobody really  
9       remembers what happened.

10               COMMISSIONER DYE: That's right.

11               MR. FINKEL: You asked a question, you  
12       know, is there ever a situation where the shipper  
13       does have a real grievance, and we still have to  
14       charge. I can say very rarely, but sometimes, and  
15       this sometimes is when the terminal does not give  
16       us relief and there are times when even when the  
17       terminal doesn't give us relief, we will refund  
18       that money because we know the shipper is very  
19       sensitive to this and we may not be able to  
20       negotiate a contract next year; and we basically  
21       lose the money because we have to pay the  
22       terminal; but it's not a situation that happens

1       very often.

2                   COMMISSIONER DYE: Right. Paolo, could  
3       you describe your resolution process -- about how  
4       long that takes, and how much you estimate it cost  
5       you and your company to resolve these?

6                   MR. MAGNANI: We do have quite a  
7       sizeable team that follows the demurrage, and  
8       detention, and per diem. It's all based in the  
9       United States; and all together between billing,  
10      collection, and dispute resolution, we have a team  
11      of over 30 people. So it's a sizeable cost and a  
12      big operation for us. Our dispute resolution team  
13      caters exactly to this department, and they are  
14      specializing in this department, and they have  
15      guidelines to ensure that we behave with fairness  
16      for the clients. For the same situation, we have  
17      the same resolution in the intent not to  
18      discrimination, obviously, any client. So, it's a  
19      complex issue. Sometimes compelled, as well, by  
20      the fact that the billing is based, maybe, on EDI,  
21      and you have to investigate EDI transaction. So,  
22      sometimes it can take longer than what you wish.

1 But my experience when we deal with CADRS in the  
2 past, is that waiting a month, month- and-a-half,  
3 usually we have a resolution, maximum; and this is  
4 for the most complex situation involving maybe a  
5 dozen of containers.

6 COMMISSIONER DYE: Okay; thank you. The  
7 Chairman, Howard, had referenced that your tariff  
8 -- of course, one of the ones that was pulled out  
9 -- I guess I have to put these on -- that when the  
10 carrier is for any reason unable to tender for  
11 delivery during free time, free time will be  
12 extended for a period equal to the duration of the  
13 carriers inability. And there were a couple  
14 others that were pulled out along those lines.  
15 But Petition asks that if a common carrier or  
16 marine terminal operator is unable to tender for a  
17 delivery or receive equipment and a disability is  
18 caused by an event that's beyond the control of  
19 the shipper, which is actually a little bit  
20 narrower, then free time would be extended;  
21 anything else that I'm missing?

22 MR. FINKEL: No; but as I said, on real

1 time that is happening.

2 COMMISSIONER DYE: Right.

3 MR. FINKEL: And the competitive nature  
4 of our business is -- I mean we've had situations  
5 where a shipper has extended free time. Like more  
6 than is probably reasonable, and then maybe an  
7 incident happens and within the period of that  
8 free time, the incident is settled and then  
9 they've come back and said well, you know, maybe  
10 we have 13 extra days free time, but since there  
11 was an issue, we want 15 days; but the issue was  
12 already settled. So, you get sometimes caught  
13 into these technical issues where we're really  
14 trying to be reasonable. As I mentioned, free  
15 time is not free; but it's something that we  
16 compete -- and the Chairman's remarks regarding he  
17 wants competition not only between the alliances  
18 but inside the alliances.

19 COMMISSIONER DYE: Yes.

20 MR. FINKEL: Believe me, there's intense  
21 competition going on. There's no difference  
22 happening between each of the alliance and within

1 the alliances. We compete savagely to the point  
2 of a lot of times we lose a lot of money, and this  
3 could become a real money loser as far as free  
4 time, because, I say again, there's nothing free  
5 about free time.

6 COMMISSIONER DYE: Yes; thank you.  
7 John?

8 MR. BUTLER: Commissioner Dye, if I may,  
9 the question's been asked twice about the  
10 difference between certain tariff provisions and  
11 relief sought in the Petition; and I just want to  
12 make sure that we recognize that there's a huge  
13 difference between commercial practice and -- call  
14 it a regulation, call it guidance, etc. -- any  
15 official action by the Commission is used in the  
16 request is that the Commission, essentially, make  
17 a statement that one way or another says you can  
18 do this and you can't do that. There is a huge  
19 difference between the flexibility that's  
20 available in a commercial context and, first of  
21 all, what the Commission could or should do with  
22 respect to a regulation; and also what the effect

1 of that would be on the market, because any time  
2 you limit flexibility, the converse is you've just  
3 reduced competition; and that's an absolute. I  
4 mean that's what happens when you tell people you  
5 have to do things a certain way. The petitioners  
6 might argue we're not telling you to do it a  
7 certain way, we're just telling you what you can't  
8 do. At the end of the day, the effect is the  
9 same.

10 And I just reiterate -- I know I'm  
11 repeating myself; but I think it bears repeating  
12 -- some of the things that they are asking the  
13 Commission to make carriers and MTOs take  
14 responsibility for are things that the Commission  
15 has previously rejected laying at the feet of  
16 carriers and MTOs. There was a big discussion  
17 yesterday about government inspections. I don't  
18 see any argument that can be made that the  
19 Commission would accept that it's unreasonable for  
20 a carrier or an MTO to refuse to extend free time  
21 if the delay is caused by the government. That's  
22 just a most obvious example. But you also look at

1       this Petition, the trigger is port congestion.  
2       How much port congestion; how congested does it  
3       have to be? Are you going to set metrics for  
4       changes in throughput? Who decides? When do you  
5       decide? I mean if you get sucked into this it has  
6       repercussions for how do you apply these  
7       standards; and if the idea here is to get more  
8       clarity so the people know what the rules are, I  
9       think you'd very quickly find yourself having  
10      created a lot of confusion.

11               COMMISSIONER DYE: Thank you. My time  
12      has expired. I appreciate it; thank you.

13               CHAIRMAN KHOURI: Thank you; and before  
14      I turn it over to Commission Maffei, if I could  
15      with Mr. Butler -- because I read the 48 case  
16      rather carefully -- there was a very interesting  
17      section in there, the Commission -- my  
18      predecessors -- were talking about the situation  
19      with certain cargoes, coffee and tea, and that  
20      they are often subject to government inspections  
21      before released; and what my predecessor said is  
22      why should that be -- that burden, I believe is

1 the word they used -- transferred to the carrier  
2 interest? But then they put something in that  
3 said that is not to say, and it's not for the  
4 Commissioners to say one way or another, but the  
5 carriers may decide to voluntarily look at  
6 differences in this particular area. So, in 1948,  
7 they had the foresight to look all the way out to  
8 1998 when the carriers did then have freedom of  
9 contract and it sounds to me like they've taken  
10 that -- do the math for me -- 40-something,  
11 60-something year suggestion; but the Commission  
12 was saying voluntary situations on behalf of both  
13 carrier interest and cargo interest may be the  
14 solution to that particular situation. So, it's a  
15 very interesting case. It's worth reading more  
16 than once.

17 MR. BUTLER: I agree it's an interesting  
18 case and I think it's also interesting that it's  
19 the one the petitioners rely upon; and when you  
20 read it more carefully, it's a bit more complex.

21 With respect to the coffee example, I  
22 mean I happen to look at Maher Terminal Tariff --

1 and I think all of the New York, New Jersey  
2 tariffs are the same -- they still have -- and  
3 they were probably put in there in 1948 --  
4 there're still special provisions for different  
5 commodities -- and I'm sure my colleagues on the  
6 Panel know more about this than I do -- but coffee  
7 is one of them. So, this has been addressed  
8 commercially, you're right.

9 MR. FINDEL: I would like to add. That  
10 is something that was not covered. Putting aside  
11 extra free time which is in far too many contracts  
12 as far as I'm concerned, not as far as our sales  
13 people are concerned. We get issues with certain  
14 commodities that are very sensitive and have to  
15 sit on the terminal for a long period of time. I  
16 go to my operations guys and I say look, go to  
17 this terminal and see what you can do, and most of  
18 the time if it's a situation that's not going to  
19 cause undue duress to the terminal, we will get  
20 special provisions for a specific commodities, and  
21 I'm not as involved in coffee and cocoa. I used  
22 to be when I was with Sealand, but COSCO doesn't

1       have a really big north, south presence, and  
2       that's where a lot of that is coming from; but  
3       there are provisions in tariffs for the terminals,  
4       and the carriers have gone to the terminals when  
5       it's not so clear cut, when there is a special  
6       issue. I mean right now, we're bringing in subway  
7       cars from China that are going to go all over New  
8       York and Boston, and incredible nightmares with  
9       getting this stuff off the terminals. We've gone  
10      to the terminals; they've been very flexible in  
11      getting this stuff because we want business to  
12      flow. We don't want congestion at the terminal.  
13      So there are special provisions made depending on  
14      the commodities.

15                   CHAIRMAN KHOURI: Thank you.

16      Commissioner Maffei, thank you.

17                   COMMISSIONER MAFFEI: Thank you, Mr.  
18      Chairman; and thank you to the witnesses. I got  
19      very good statements so far. Look, obviously,  
20      there are many areas of disconnect between what we  
21      heard yesterday and what we're hearing from you  
22      gentlemen. One area seems to be the capacity of

1 shippers and BCOs to contact you if there is a  
2 dispute or they feel that they should not be  
3 charged because of whatever reason, and you  
4 gentlemen all seem to be saying -- and forgive me  
5 if I'm over interpreting -- but it's very easy to  
6 contact you; and I think you said, Mr. Magnani,  
7 you're the person who actually gets all of these  
8 calls; you're as high as it gets. You don't have  
9 to contact Geneva, you're it; you can grant the  
10 relief. So, I guess let me ask all three of you,  
11 or four of you -- if you want to come in too, John  
12 -- but what is the process for contacting you if I  
13 am a shipper and I think gosh, I've got a good  
14 case here, I need some more free time?

15 MR. FINKEL: I'll go first. I've been  
16 in this industry 37 years. Most people know me.  
17 Your CADRS Department knows me very well; they're  
18 on the phone with me all the time. They get any  
19 complaints, they call me directly. I deal with  
20 the complaints directly. Does every shipper have  
21 my number; no. I'd never get any work done if  
22 they did, but it's fairly easy to get in touch

1 with me; and if it goes to the sales rep and there  
2 is a real problem, it will come to my desk. I  
3 have not experienced long delays and people not  
4 getting to the right people to make a decision.

5 COMMISSIONER MAFFEI: Mr. Craig, Mr.  
6 Magnani?

7 MR. CRAIG: Sure. I think we're  
8 similar. I'm also part of the escalation chain,  
9 only at very serious issues, and they tend to go  
10 back a few years if they've gotten that far.  
11 There're a number of entry points, BCO, or AVO  
12 through our sales people; could be through our  
13 customer service; trucking company; it could be  
14 through our carrier services group.

15 COMMISSIONER MAFFEI: You mentioned  
16 something called a care team?

17 MR. CRAIG: Yes.

18 COMMISSIONER MAFFEI: What's that?

19 MR. CRAIG: That's our group in Atlanta,  
20 customer service.

21 COMMISSIONER MAFFEI: Can I reach that  
22 with a (800) number?

1                   MR. CRAIG: No; not directly. You would  
2                   be more to the general customer service and, based  
3                   on the issue, they handle special issues, high  
4                   profile customers, high profile services issues  
5                   and dispute resolution. So, a customer service  
6                   rep, sales person, or an operations person working  
7                   with trucking company would hand over a dispute to  
8                   this group, okay; and they assess the issue and  
9                   draw a conclusion from there.

10                  COMMISSIONER MAFFEI: As is similar, Mr.  
11                  Magnani?

12                  MR. MAGNANI: It is indeed similar. I  
13                  would say that probably the most easiest part of  
14                  the path of least resistance for our clients is  
15                  through our sales rep; and the sales rep visit  
16                  regularly all of our accounts; and they have a  
17                  good relationship so they can start the  
18                  conversation.

19                  COMMISSIONER MAFFEI: But the issue is  
20                  what we heard yesterday -- I'm not saying any of  
21                  that, all that makes some sense -- but the issue  
22                  is that if you're picking up one of these

1 containers and you're suddenly given these  
2 charges, you're not sitting in an office able to  
3 call somebody, or look up the number, and then put  
4 it on speaker phone until you get through, you're  
5 sitting there being asked for a large, possibly a  
6 large payment in your truck. If there was an  
7 easier way to get through that might be helpful,  
8 because there could, indeed, be a legitimate  
9 issue.

10 MR. MAGNANI: There could be legitimate  
11 issues and let's make an example. A truck claim  
12 to be in line and it claim that he's rejected in  
13 the terminal. In all of our terminals we have a  
14 MSC rep, so if we get contacted in that very  
15 moment, our rep can verify if, indeed, there is in  
16 that moment an issue at the terminal, and the  
17 issue is indeed legitimate, we take action. If  
18 instead we consider the issue a non-issue or the  
19 trucker is nowhere to be seen in line, obviously,  
20 we will take a different action.

21 COMMISSIONER MAFFEI: Okay. Another  
22 area of disagreement seems to be the cash -- well

1 I'm not sure if it's an area of disagreement,  
2 we'll find out -- the cash on the barrel head that  
3 if there is an issue where a shipper or somebody  
4 picking up the cargo believes that there should be  
5 free time granted, they still have to come up with  
6 the full fee of paying, for instance, the drayage,  
7 or the demurrage -- or any of these -- they have  
8 to pay the full bill in order to get the  
9 container, or they won't be allowed to take the  
10 container. That, to me, seems a little  
11 unreasonable at times. Why not make it half the  
12 bill and then you can work it out later? I mean  
13 it seems like they have to pay the entire thing  
14 and at that point, you don't know if they have a  
15 legitimate argument or not. Care to comment  
16 there? Are we just in agreement; we'll make it  
17 only half; you only have to pay half?

18 MR. FINKEL: A lot of times, I mean,  
19 cash on the barrel had -- that I mean, it rarely,  
20 I don't remember hardly, ever that kind of  
21 situation happens, a lot of people have credit.  
22 In our contracts we specify who pays this free

1 time, you know. Is it the shipper, or the  
2 trucker? The shipper has to nominate that, and  
3 usually when there's a problem where we'll someone  
4 at the gate, it's because there's been a severe  
5 delinquency.

6 It's not just, oh, you know, he didn't  
7 pay the last demurrage bill, it's a severe  
8 delinquency, and that's when it all -- as far as  
9 I'm concerned when it comes to a head, it's not  
10 the general course of business.

11 MR. CRAIG: I think demurrage in a lot  
12 of cases, it is cash on the barrel, I think to  
13 release a box -- a terminal will require cash. We  
14 have to be part of that. Often, we'll tell the  
15 terminal, release it on our behalf, and we are on  
16 the nickel, and then when there's a dispute, we'll  
17 take the risk and work out the dispute resolution,  
18 and it might end up costing us money, and these  
19 are decisions we've got to make, and make pretty  
20 quickly.

21 Detention is not -- that is all after  
22 the fact. And, boy, that's a tough one when we

1       have a lot of resources in the billing --

2                   COMMISSIONER MAFFEI:  You are taking the  
3       -- you're, in essence, taking on the risk there?

4                   MR. CRAIG:  A hundred percent, and that  
5       is a huge endeavor on our part to go after those  
6       bills, and the receivables, and track those down,  
7       very laborious, very administratively intensive.  
8       So, certainly there's leverage on demurrage in a  
9       lot of cases and, yeah, I agree it's not something  
10      we want to discuss, probably, changing that  
11      practice right at this point in time.

12                  MR. FINKEL:  And I'd just like to add,  
13      to clarify.  A lot of contracts actually specify,  
14      if there's a demurrage issue the carrier will take  
15      care of it and bill us later.  That specify in a  
16      lot of contracts.

17                  COMMISSIONER MAFFEI:  And just to  
18      clarify, the carrier, well, you are the carrier?

19                  MR. FINKEL:  Yes.

20                  COMMISSIONER MAFFEI:  Okay.  Got it, got  
21      it.

22                  MR. FINKEL:  And a lot of times the

1 shipper will put in the contract, and if we have a  
2 demurrage issue you have to guarantee the  
3 demurrage, and then we'll negotiate it later.  
4 That's in several contracts.

5 COMMISSIONER MAFFEI: Well, I'm not  
6 sure, and I'll ask the same thing of the terminal  
7 operators. I mean, obviously, if you have to pay  
8 the full thing, you know, it's a lot harder to  
9 say, you know, we'll pay half, we'll pay the full  
10 thing, I mean, I understand that. But there does  
11 seem to be a disconnect in there, and I think we  
12 can -- you know, one of the things that we'll try  
13 to do as a Commission is kind of find out which  
14 one of you is right.

15 Now, obviously, we are talking about  
16 thousands of individual cases, and I'm sure they  
17 are right on a few cases, and you are right on a  
18 few cases, but in the middle, it's kind of either  
19 one or the other.

20 Let me ask, Mr. Magnani, you mentioned  
21 how different some of the definitions are of these  
22 terms, both in the United States among ports, but

1 particularly if you go around the world. Would it  
2 be useful if the Federal Maritime Commission work  
3 with its international partners to try to at least  
4 standardize the language so that a shipper would  
5 at least know that if it's a one -- you know, if  
6 they are getting three days' demurrage, what three  
7 days' demurrage means. Is that helpful?

8 MR. MAGNANI: Standardization in the  
9 language that really would help, we are starting  
10 our own internal standardization to try to avoid  
11 this problem in the future, but indeed that could  
12 be a benefit.

13 COMMISSIONER MAFFEI: Now, Mr. Butler,  
14 would the World Shipping Council have any role  
15 there, or any other of your colleague  
16 organizations?

17 MR. BUTLER: I just wouldn't  
18 underestimate the amount of work you're talking  
19 about. We've been involved in the negotiation of  
20 a number of international treaties, it's not to be  
21 undertaken lightly, and if you've got something  
22 that's not legally binding, it's not really good

1       for much. The other thing is that even if you  
2       were to get agreement on what terms meant, you  
3       would have to educate everyone in the world.

4               As Mr. Magnani said, part of the problem  
5       is people, shippers in other parts of the world,  
6       look to the meaning of those terms in their  
7       countries, and make assumptions about what they're  
8       negotiating in terms of their, you know, U.S.  
9       Operations based on that other meaning.

10              That's just the beginning because as Mr.  
11       Magnani also said, okay, we can all agree what  
12       demurrage, and detention, and per diem might be,  
13       but I think most terminals and most carriers have  
14       huge differences in: what's the first day? For  
15       containers, is it the first day that operations  
16       begin unloading the ship, or the day that  
17       operations are completed? Sometimes it's calendar  
18       days, sometimes it's working days; and we can go  
19       on and on, and this, you've only touched a small  
20       piece of it, I'm not sure that this is.

21              COMMISSIONER MAFFEI: Okay. I think  
22       you've answered -- you've answered the question

1 well, but I'm not sure if the fact that it's so  
2 difficult means that it wouldn't be worth it,  
3 given that that might resolve a lot of these  
4 issues. Anyway, my time is up, and I look forward  
5 to the second round of questions. Thank you.

6 CHAIRMAN KHOURI: Thank you. My next  
7 question was on the prior testimony that we've had  
8 of how the ancient admiralty concept of possessory  
9 land was so inviolate, and then have at the  
10 experience of making those choices, let it go or  
11 not. But really from the back and forth that I  
12 heard, Richard -- I mean John, once again this was  
13 one of the panels that came up three or four  
14 different times, and the term was "transparency".

15 And I wondered if there was really  
16 transparency in this. I keep making notes as: so  
17 how often is this actually happening that cargo is  
18 being held, you pay this bill before we let the  
19 container off the terminal grounds. Any guess is,  
20 I mean, this may be, again, a separate issue that  
21 we take up post-hearing, but a part of Mr.  
22 Butler's admonition is, before we do regulations

1       that apply to 255-plus terminals that are  
2       registered here at the Federal Maritime Commission  
3       is, stop and think about it. So, if you could  
4       address the issue of you not leaving with that  
5       container until you pay X dollars.

6               MR. CRAIG: I'll have to be frank, I  
7       haven't researched that. We could probably dig  
8       into it, and provide some more. I just think that  
9       the vast majority of transactions are not  
10      controversial; it's understood, a box sat on the  
11      terminal for a reason, costs were incurred for a  
12      reason, people understand that, people paid for  
13      it, and everything happened the way it was  
14      supposed to, including providing cash up front  
15      where it was necessary.

16             The proportion of the time where that  
17      happens, versus where we have some more  
18      arrangements that Howard referred to, where we go  
19      back and collect it after, I'd have to do some  
20      research. I don't want to throw a number out here  
21      without having had the opportunity to spend a  
22      little time on it.

1                   CHAIRMAN KHOURI: And not to belabor the  
2 point, if you were here for the testimony  
3 yesterday, Mr. Pisano and his coffee company, the  
4 situation he laid out, he is totally credible. I  
5 believe it happened exactly the way he laid it  
6 out.

7                   Mr. Roche with Mohawk, I have no doubt  
8 that those factual situations he laid out,  
9 happened exactly the way he said. That doesn't  
10 answer the question of: are these outliers that  
11 are extremely frustrating to American importers  
12 and exporters, but how are we going to handle this  
13 from getting two of us up here to agree on a  
14 regulation that's going to apply to the entire  
15 United States supply chain?

16                   So, the question range: are you still  
17 saying you don't see this on an often enough basis  
18 that you can comment. Is that the answer for the  
19 panel?

20                   MR. CRAIG: I won't dispute that  
21 situations like that could occur, but, again, I  
22 think we have means of addressing and dealing with

1       them to reach a mutually satisfactory conclusion,  
2       after the fact.  Yes, there are various issues  
3       where somebody couldn't pick up their container  
4       and feels aggrieved because of it.  We'll work the  
5       issue out, we'll find a solution here, and I think  
6       we do that most of the time.

7               MR. FINKEL:  When I was in college I  
8       worked in retail, I worked at selling stereos, and  
9       it was like, oh, just sell it and you never want  
10      to see the customer again.  Make as much money as  
11      you can, and you never see the customers again.  
12      And when I finally got into -- graduated college,  
13      got into this industry, it was like: oh, sales, I  
14      didn't really like sales too much, because I  
15      didn't feel we were fair to the customers.

16             But here, I mean, we have relationships  
17      with our customers.  If you are going to be doing  
18      things like this, and not giving consideration  
19      when they have a problem, you are not going to  
20      keep that customer.  So, are there situations that  
21      happen?  Yes.  Have there been contentious issues?  
22      Yes.  You know, I'm not saying we are completely

1       without fault, sometimes our fault, sometimes it's  
2       the shipper's fault, but generally we are in a  
3       very competitive business and we try to work these  
4       situations out.

5               COMMISSIONER DYE: One more; one brief  
6       one. Who is the lowest-level customer service  
7       representative in your company that has authority  
8       to compromise charges?

9               MR. MAGNANI: We do have specifically  
10       for demurrage and detention, the Demurrage and  
11       Detention Manager, or any Line Manager for the  
12       specific trade lane.

13              COMMISSIONER DYE: So, your low-level  
14       customer service folks are empowered to give  
15       service?

16              MR. MAGNANI: The low-level customer  
17       service; are empowered to do the research and  
18       bring the case to the attention of the manager.

19              COMMISSIONER DYE: And so that's one  
20       tier up to --

21              MR. MAGNANI: One tier up.

22              COMMISSIONER DYE: One tier up. Thank

1       you.

2                   MR. CRAIG: We have coordinators in our  
3       customer service group that have a certain  
4       authority to make decisions basically on the spot,  
5       and so those are frontline people.

6                   COMMISSIONER DYE: Okay.

7                   MR. FINKEL: Just like MSC said, a  
8       person at a clerk level will not have that  
9       authority, they'll have to go to a manager, but  
10      it's one level up.

11                  COMMISSIONER DYE: Okay. Great! Okay,  
12      thank you.

13                  CHAIRMAN KHOURI: Can I just continue  
14      that. So, the truck is at the out gate, how fast  
15      does that whole process happen?

16                  MR. CRAIG: Not that fast. At least  
17      days, it could be weeks to be frank. So no, it's  
18      not going to -- the customer wanting to get my box  
19      this afternoon, no, the dispute resolution is  
20      going to -- it is after the fact. It's not during  
21      the fact.

22                  CHAIRMAN KHOURI: Okay. One last, this

1       was Commissioner Maffei.  If one were to sit down  
2       with an industry group of any description, is  
3       this first-day issue one that could be just as  
4       easily resolved as -- is this really an issue that  
5       causes problems in terms of difference and  
6       definition from one place to another?

7               MR. BUTLER:  We are all looking at each  
8       other as if we don't understand the question.  I  
9       certainly don't.

10              CHAIRMAN KHOURI:  Oh, the first day of  
11       free time running; you know, is it the day of --  
12       is this an issue, is it differential from one  
13       terminal to another as to, what is day one of free  
14       time?  It would strike me that that could fairly  
15       easily be addressed, if uniformly were the object.

16              MR. BUTLER:  I'll let my colleagues  
17       speak to this.  Now, let the terminal speak to it,  
18       but if -- to go back, my only comment is this.  If  
19       you want uniformity it comes at the price of  
20       competition.  These things are different, not  
21       because people are trying to make them confusing,  
22       they are different because these provisions have

1       been adopted in response to commercial pressures  
2       over the years, and that's why you see different  
3       provisions in different terminal schedules, and in  
4       different service contracts, and in different  
5       carrier tariffs.

6               So, with all of this, at some point  
7       there's a question of Commissioner authority, and  
8       telling everybody to do the same thing, but even  
9       before you get to that, there's a question of the  
10      wisdom of trying to make everything the same.  
11      I'll stop there, and pass it on to the rest of the  
12      panel.

13             MR. MAGNANI: I can bring an example. A  
14      port, a small port in the East Coast and a large  
15      port in the West Coast; the East Coast told me  
16      they have a rule that says: the free time start as  
17      soon as all the containers for the ship are  
18      available. If the West Coast would adopt the same  
19      rule, with operation on a very large ship, that  
20      will operate in the terminal for five, six days,  
21      it would take a long time.

22             In those terminals those containers need

1 to be located as soon as they're available, so  
2 that's why we have differentials in different  
3 terminal. I will let the MTO speak, but as well,  
4 this depends on how they are organized, if they  
5 have grounded operation, mounted operation and  
6 chassis, ordering their equipment. So, I would  
7 believe that it would impede as well to compete  
8 fully up there.

9 CHAIRMAN KHOURI: Thank you. But the  
10 rest of you now would understand that point; very  
11 good. Do you want to add or --

12 MR. CRAIG: Well, I don't think I have  
13 much to add. I mean, certainly standardization  
14 wouldn't hurt; it's not the big concern for us,  
15 frankly. I think we can, if we manage it, maybe  
16 -- perhaps many of the people yesterday that were  
17 testifying might be in a better position to say,  
18 is that really a cause for confusion or problems,  
19 because one terminal defines it this way, and  
20 another terminal defines it that way. But from  
21 our standpoint, it's not really a serious problem.

22 COMMISSIONER MAFFEI: Thank you, Mr.

1 Chairman. And thank you for that line of  
2 questions, and I do, at least in terms of myself  
3 as a Commissioner invite any of the people who  
4 testified yesterday to let us know whether that  
5 is, indeed part of the problem. And, you know, I  
6 can't speak for the Chairman, but Mr. Butler, what  
7 I'm talking about, I'm talking about uniformity of  
8 definition and that would be, in order to allow  
9 people to know what they're getting and, you know,  
10 fuller information helps markets work.

11 So, I'm not talking about something that  
12 would reduce competition, I'm talking about  
13 something that just makes it clear what people are  
14 getting. That's why what we are talking about  
15 transparency, not because we don't believe in  
16 markets, because we do believe in markets.

17 MR. BUTLER: And my only point, and I'm  
18 not trying to be argumentative, but my point is,  
19 definitions are a sufficiently small part of the  
20 overall consideration that I just question whether  
21 taking that on, and that's a big one by itself,  
22 given everything you've just heard about, okay,

1       then, how are those definitions used.

2               Okay. We all agree what demurrage is,  
3       we all agree what detention is, we all agree what  
4       per diem is. A couple of points; one is, that's  
5       just the tip of the iceberg, and then what's the  
6       first free day, Mr. Magnani's example about, if  
7       it's going shift -- commence his operations, or  
8       finish his operations. People, for operational  
9       reasons and commercial reasons, it will differ  
10      with respect to that, so you only created  
11      certainty with a very small part of the issue, and  
12      it's not really the moving part --

13              COMMISSIONER MAFFEI: Okay. I  
14      understand. You made your point well. You know,  
15      okay, Mr. Butler, the World Shipping Council, in  
16      its written comments suggested that the Commission  
17      lacks the authority to issue the proposed -- the  
18      rule proposed in the petition because of the  
19      differences between Section 17 of the 1916 Act,  
20      and Section 10(D)1. Is it the WSC's position that  
21      the Commission also lacks the authority for other  
22      regulations that it issued since 1984 under the

1 authority in Section 10(D)1? Or are your  
2 assertions limited to this proposed rule?

3 MR. BUTLER: I'm sure you're familiar  
4 with the movie Cool Hand Luke, we have --

5 COMMISSIONER MAFFEI: Yeah, okay.

6 MR. BUTLER: Let me indicate here, we do  
7 not question the authority of the Commission to  
8 adjudicate or provide guidance to anyone. Okay?  
9 A lot of what we talked about in our first set of  
10 comments was the difference between an  
11 interpretive rule and a legislative rule. And I  
12 think there's been some confusion around that. We  
13 try to clear that up in our second set of comments  
14 that was provided in response to the petition to  
15 supplement the record.

16 So, I want to be very clear about this.  
17 You do have the authority, there are things,  
18 frankly that the Commission has never had the  
19 authority to do. For example, there was a lot of  
20 discussion yesterday about the level of detention  
21 and demurrage charges. And I don't think anyone  
22 is seriously asking you to set those levels, but

1       if you look, for example, at Exhibit A of the  
2       petition, in sub-section D, it does invite you to  
3       decide what's compensatory, what's penal, and how  
4       much you can charge in each box.

5               And if you start down that road, you are  
6       going to find yourself in a rate-making activity  
7       that the Commission, really, has never had the  
8       authority to do. So just, maybe to be careful  
9       about what we are talking about, when we talk  
10      about authority.

11             COMMISSIONER MAFFEI: Okay. That point  
12      is well taken. And you brought up earlier in your  
13      testimony, that the lack of fault of shippers is  
14      not an appropriate standard, but rather the --  
15      whether a carrier or an MTO has been unreasonable.  
16      What if we were to adopt general guidelines,  
17      simply saying what unreasonable is, given that you  
18      and your colleagues are contending that there are  
19      no unreasonable practices, certainly no  
20      unreasonable practices that are setting a pattern.

21             What would be the harm to you of us  
22      doing that? We are just setting forth, again,

1 guidelines, interpretive rule, or statement of  
2 policy, if you will, if you're not unreasonable,  
3 what would be the harm in saying it?

4 MR. BUTLER: It depends on what it says.  
5 But the problem is, and this comes out very  
6 clearly when you look at the relief that it's  
7 asked for by this petition. And we talked about  
8 this a minute ago. They are setting triggers --  
9 they are asking you to set triggers for when  
10 carriers and marine terminal operators are willing  
11 to be told: the Commission will determine that it  
12 is unreasonable if you do X, Y and Z.

13 Or if in this circumstance you charge  
14 detention or demurrage, and those triggers are  
15 extremely broad, and the way this petition is  
16 written, would providing additional guidance make  
17 it easier for people to bring complaints to the  
18 Commission?

19 The answer is, yes, but not for the  
20 reasons that you were talking about yesterday. If  
21 you were to adopt what's before you, you would be  
22 inviting people to come in and claim the carriers

1       that MTOs are being unreasonable, even if a delay  
2       and a resulting charge was caused by the United  
3       States Government.

4               COMMISSIONER MAFFEI: Okay. But what if  
5       we didn't adopt exactly what was before us, but  
6       what if we ourselves, as Commissioners, listening  
7       to both sides, and allowing both sides to input  
8       comment, would have defined instances of  
9       unreasonableness, again, not binding, not a  
10      legislative rule, if you will, but a statement of  
11      policy. What would be the harm in that?

12             MR. BUTLER: Well, again, and I'm not  
13      trying to be cute, but it completely -- it's  
14      completely --

15             COMMISSIONER MAFFEI: Again, you know,  
16      and I don't think you are trying to be cute, Mr.  
17      Butler, but let's say we go too far, then you can  
18      take us to court, and you can have that tossed out  
19      and, you know, the Circuit Court can say, gee,  
20      that even with Chevron deference, I feel that the  
21      FMC overstepped its bounds, and this is clearly  
22      not unreasonable, in the cases brought forth by

1       whatever carrier it is. They were acting  
2       reasonably, and therefore, if they throw it out, I  
3       mean, you know, you've got recourse should we go  
4       too far with that.

5               MR. BUTLER: Well, a couple of points,  
6       Commissioner Maffei, first of all it does depend  
7       entirely on what you would do, and presumably you  
8       would go through a rulemaking proceeding, because  
9       if you're not willing to adopt what's here, which  
10      I think would be ultra vires. It would go through  
11      a rulemaking proceeding, you propose a rule, we  
12      would provide comments, and we'll see where it  
13      comes out.

14             COMMISSIONER MAFFEI: Of course.

15             MR. BUTLER: I mean, that's the obvious  
16      answer. I just think it is important, if you were  
17      to consider going down that path, that you do look  
18      really hard with your General Counsel about the  
19      difference between guidance, an interpretative  
20      rule and a substantive rule, because it's not what  
21      you call it, it's what it does. And I will just  
22      encourage you to think really long and hard about,

1 if you adopt something, how is that actually going  
2 to play out in the marketplace, and how is that  
3 actually going to play out in complete proceeding?

4 COMMISSIONER MAFFEI: No, I mean, if it  
5 didn't change anything, then I don't think the  
6 other side would have a bad argument, but their  
7 argument is, it's that it's essentially chicken --  
8 well, and I don't what their argument is, but from  
9 what I can see, there is a chicken and egg  
10 problem, which is they are asked to bring cases,  
11 there are major barriers, financial and otherwise,  
12 to bring in a case, and there isn't any precedent  
13 if you don't bring cases.

14 So, what we would be doing, essentially,  
15 is putting a bottom floor kind of precedent to  
16 allow cases to be brought with a little bit more  
17 security in circumstances that are egregious.  
18 Now, what you said, these are not such egregious  
19 issues, or you work things out most of the time,  
20 it's just calling their bluff then. Again, I do  
21 have a --

22 MR. BUTLER: Well, I supposed you're

1 saying the same.

2 COMMISSIONER MAFFEI: -- and we can go  
3 through that -- we certainly would go through that  
4 process, by the way, nobody is talking about not  
5 going through the usual rulemaking process. And  
6 with our General Counsel, and I think he would  
7 work very hard to make sure that we didn't  
8 overstep those bounds.

9 MR. BUTLER: I'm sure that's the case.  
10 Having been in private practice before, and with  
11 current job, I can tell you that in litigation a  
12 lawyer will pull anything off the shelf to make  
13 the case, and I just think it would be naïve to  
14 think that that even if you call something clearly  
15 guidance, if you get into a level of detail that's  
16 actually going to help anybody, in terms of know  
17 what they can and can't do.

18 And that's what we heard yesterday  
19 that's, supposedly, the point of all this, so that  
20 people have a better idea of what they can and  
21 can't do. If you get into that level of  
22 specificity, you are going to get into a position

1       where you reduce the amount of competition and  
2       flexibility in the system.

3               COMMISSIONER MAFFEI:  No, no, I agree --  
4       No, no, I agree --

5               MR. BUTLER:  And then if I may finish  
6       that.  I frankly think the petitioners have done  
7       you, as the Commission, a real disservice.  They  
8       have filed a petition, that can't be granted in  
9       its current form, and I think they would admit  
10      that if you really push them.  And yesterday you  
11      had people backpedalling saying, well, look it  
12      doesn't have to be this, just do something.

13              But after a day of questioning  
14      yesterday, I didn't hear anybody say, okay, well  
15      maybe this is an overreach, maybe this is too  
16      broad, but why don't we do X, why don't we do Y?  
17      There has not been, in my view, a credible  
18      solution put forward to you, in regulatory  
19      language or guidance language that would avoid all  
20      these unintended consequences, and actually  
21      provide some guidance to the market.  That's not  
22      to say it's impossible, but this is really hard.

1 And I just want everybody to understand what we  
2 undertake if we try to do this.

3 COMMISSIONER MAFFEI: Yes. I mean,  
4 look, I agree with some of that, but I do think  
5 that it's -- to me anyway, it's fine to issue a  
6 petition, and suggest potential solutions, but the  
7 petition is valid even if there are grievances.  
8 And yes, I certainly agree that we do not want to  
9 limit flexibility or reduce competition, except in  
10 the instance of unreasonable and unjust behavior.

11 And I'm fine with limiting flexibility  
12 to conduct unreasonable practices, if that can be  
13 done, and I don't disagree, Mr. Butler, that that  
14 would be very, very challenging, but we are here  
15 for a reason.

16 One question -- and one final question  
17 for you, but also for the companies themselves:  
18 What if we were to look more towards transparency?  
19 We've been talking about, yesterday, and you  
20 mentioned it a little bit today, punitive versus  
21 compensatory charges. What if we were to say,  
22 that it has to be one or the other, you know, we

1 are not going to limit anything, but simply, they  
2 have to disclose what portion of the charges,  
3 punitive or portion of the charges, compensatory.

4 What are the kinds of transparency,  
5 things like that? Is that something that you  
6 could deal with? Would that incur a lot of  
7 ancillary costs?

8 MR. BUTLER: I'll jump in at the  
9 frontend, and then let my colleagues speak to the  
10 mechanics of that, but what you're really talking  
11 about, is asking people to publicly disclose a lot  
12 of their cost information in how their competitive  
13 situations are defined. I think that there's a  
14 huge problem with that.

15 MR. FINKEL: I would tend to agree with  
16 that. And I mean that I'm -- I think, when we  
17 negotiate contracts with the shipper, a lot of  
18 times -- I had a situation last week, where a  
19 shipper wanted to put the value of a cargo, and  
20 then have a rate that was, I think, 0.0001 percent  
21 of that. So, of course, I mean, exposing all the  
22 stuff, and getting down to, you know, really

1 minute costs, I don't think that's fair for the  
2 carriers. We don't ask that for shippers when we  
3 negotiate rates; if we did most of the export  
4 market today wouldn't move.

5 MR. CRAIG: And some of the points I was  
6 trying to make earlier about keeping our network  
7 fluid, getting the boxes back to Asia, there can  
8 be huge costs here, but it varies. And it's going  
9 to be an endless argument that we say the cost is,  
10 the cost is not being to cover a next booking out  
11 of the Yantian in three weeks. That's going to be  
12 a huge number.

13 Well, you could have done this, you  
14 could have done that, I mean, this could just be  
15 an endless argument, trying to justify the cost  
16 and getting, you know, what should be applicable  
17 and what shouldn't. So, I don't see an easy way  
18 to go about that.

19 MR. MAGNANI: Maybe an analogy, if I go  
20 to buy a suit, I'm not asking them how much they  
21 spent, you know, for the tailor, or for the  
22 sewing, and so on.

1                   COMMISSIONER MAFFEI: Look, I think  
2           that's fair, but I'm going ask one other question,  
3           even though I think Mr. Craig already addressed  
4           this, but yesterday several of the testifiers  
5           talked about how they believe that this was a  
6           revenue stream, a positive revenue stream for the  
7           carriers. Can you just confirm that you do not  
8           believe that to be the case? Or if it's the case,  
9           then I would ask all three carriers.

10                   And to you, Mr. Butler, in terms of the  
11           industry, is this a positive revenue stream? Do  
12           you make money off of this? Because I think what  
13           Mr. Magnani is -- it's totally true, if this is  
14           your main product, the nobody would be asked to  
15           say what your profit is on your main -- you know,  
16           your main product compared to what your costs are.  
17           But my understanding is, this isn't a -- you're  
18           not making, this isn't -- this is an additional  
19           fee, but is his a way? Is this in fact a revenue  
20           stream for you?

21                   MR. CRAIG: In my view, most definitely  
22           not. I think I mentioned that on the demurrage we

1 are out of pocket to start with. Per diem, when  
2 you factor in all these costs that I'm alluding  
3 to, and you did the arithmetic, I'm sure we are  
4 not whole. It's a perfect world we would much  
5 rather, I think Howard mentioned earlier, we'd  
6 rather see our boxes moving, getting back timely.  
7 If our choice was the current state of affairs,  
8 versus a seamless network where the boxes were  
9 moving and turning as they should be, and there  
10 weren't any demurrage and detention charges at  
11 all, a much better world. We would much prefer  
12 that.

13 MR. MAGNANI: Most of the time this is  
14 not a revenue-generating charge for us, MSC.

15 MR. FINKEL: If you look at every box,  
16 micro, there may be one instance where you can  
17 say, oh, yeah, that made a little money, but I see  
18 this thing, it's not -- we certainly don't feel  
19 this is a profit center, we use this as a cost  
20 control measure. This falls under my bailiwick,  
21 because I'm Head of the cost control people, this  
22 is something to control costs, not to make money.

1                   MR. BUTLER: I don't have any figures on  
2                   the industry as a whole, I mean those are  
3                   individual company numbers, and that's where I'll  
4                   stay.

5                   CHAIRMAN KHOURI: Thank you.  
6                   Commissioner Dye.

7                   COMMISSIONER DYE: Yes. We may have  
8                   some questions for you for the record, and we'll  
9                   get those to you promptly. Thank you.

10                  CHAIRMAN KHOURI: Thank you. It's  
11                  12:20, if we can -- ahead of schedule, but let's  
12                  take an hour and ten minutes, if we can be back at  
13                  --

14                  MS. DICKON: Let's just schedule to  
15                  start at 2:00 again, that we can start earlier, if  
16                  you'd like.

17                  SPEAKER: We could start 1:30.

18                  CHAIRMAN KHOURI: Well, we could start  
19                  at 1:30.

20                  MS. DICKON: Okay.

21                  CHAIRMAN KHOURI: It was my point, and  
22                  people getting out earlier I don't think they are

1       going to -- anybody complaining, raise your hand,  
2       if you're complaining about getting out early.  
3       Okay. The early folks have it, so we'll reconvene  
4       at 1:30. Thank you very much.

5                               (Recess)